

Steve J. Martin  
Monitor

## OFFICE OF THE MONITOR

NUNEZ, ET AL. V. CITY OF NEW YORK, ET AL.

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September 19, 2017

### Via ECF

The Honorable Laura T. Swain  
United States District Court, Southern District of New York  
500 Pearl Street  
New York, NY 10006

*Re: Nunez, et al. v. City of New York, et al., 11-cv-5845 (LTS) (JCF)*

Dear Judge Swain:

We write to advise the Court that Plaintiffs' Class Counsel and the United States Attorney's Office for the Southern District of New York have notified the Monitoring Team that they have agreed to maintain the confidentiality of the reports prepared by the Department's Use of Force Auditor pursuant to § X (Risk Management), ¶ 3.<sup>1</sup> The agreement regarding the use of the Department's Use of Force Auditor Reports now completes the set of agreements the Monitoring Team previously advised the Court about on September 19, 2016 (docket entry 290) regarding the above-mentioned persons or entities' use of: 1) the draft Monitor's reports; 2) the narrative description of the Department's Compliance Reports<sup>2</sup>; and 3) the information produced by the Department in connection with the Compliance Reports<sup>3</sup>. Exhibit 1 to this letter provides a comprehensive table of all the agreements that have been reached.

Please do not hesitate to contact us if you have any questions or require further information.

Sincerely,

s/ Steve J. Martin

Steve J. Martin, Monitor

Anna E. Friedberg, Deputy Monitor

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<sup>1</sup> The Use of Force Auditor Reports are produced to the Parties and the Monitoring Team pursuant to § XIX (Reporting Requirements and Parties' Right of Access), ¶ 4(c)(viii).

<sup>2</sup> § XIX (Reporting Requirements and Parties' Right of Access), ¶ 4(a)

<sup>3</sup> § XIX (Reporting Requirements and Parties' Right of Access), ¶ 4(b), 4(c), 4(d).

**Exhibit 1<sup>1</sup>***Agreement of Use of:*

- (1) draft Monitor's reports;  
 (2) the narrative description of the Department's Compliance Reports; and  
 (3) the information produced by the Department in connection with the Compliance Reports  
*as of September 15, 2017<sup>2</sup>*

**Legend**

<b>Category 1</b>	The red box means the information is confidential	<b>Category 2</b>	The blue box means that the information is not confidential, but the Parties have agreed not to use the information during the period between the issuance of the Department's Compliance Report and the filing of the Monitor's Report with the Court as defined by § XIX (Reporting Requirements and Parties' Right of Access), ¶¶ 1 and 17. The information is not confidential after the filing of the Monitor's Report.
<b>Category 3</b>	The green box means the information identified in the "Description" column is not confidential and may be used to inform discussions or responses to inquiries related to the City Jails during the period between the issuance of the Department's Compliance Report and the filing of the Monitor's Report with the Court. However, the information identified in the "Status of Confidentiality" column may not be disclosed during the period between the issuance of the Department's Compliance Report and the filing of the Monitor's Report with the Court as defined by § XIX (Reporting Requirements and Parties' Right of Access), ¶¶ 1 and 17. The information is not confidential after the filing of the Monitor's Report. Further, the <u>underlying documents</u> with the raw data will not be publicly posted or provided to any third parties.		

<sup>1</sup> This agreement is not intended to preclude the Monitor from developing or incorporating information in the Monitor Report filed with the Court that he deems appropriate to fulfill his responsibilities under the Consent Judgment and consistent with the obligations in Section XX (Monitoring), Paragraph 17. Further, this agreement is not intended to preclude the Department from using its own information for any purpose outside this litigation, including any public reporting that the Department is required to publicly report as part of the ordinary course of business, as contemplated by the Protective Order previously entered in this case (Dkt. 89, ¶ 9 at pg. 5). To the extent that the Department publicly reports data or information as part of the ordinary course of business, this agreement does not prohibit the Parties from discussing that data or information once it has become publicly available.

<sup>2</sup> This chart was originally shared with the Court on September 19, 2016 (docket entry 290). This chart has been revised to include three updates: (1) the agreement regarding the Use of Force Auditor Reports (§ XIX, ¶ 4.c.viii.), (2) the legend now references to the Consent Judgment regarding the timing for the development of the Monitor's Report (§ XIX (Reporting Requirements and Parties' Right of Access), ¶¶ 1 and 17) and (3) the specific number of days to develop the Monitor's Report have been removed because the time to develop the Monitor's Report has been modified pursuant to the August 11, 2017 Order by the Court (docket entry 303). The time to develop the Monitor's Report may be calculated pursuant to § XIX, ¶¶ 1 and 17.

Description	Status of Confidentiality	Consent Judgment Provision	Corresponding Compliance Report Appendix
Draft Monitor's Report	Confidential ( <b>Category 1</b> )	§ XX, ¶ 17	
<b>Compliance Report Narrative</b> The narrative portion of the Compliance Report is confidential. Plaintiffs and DOJ will have the opportunity during the comment period to the draft Monitor's Report to request the Monitor incorporate factual points from the narrative into the Monitor's Report (assuming the Report does not already incorporate those facts). If the requested facts are not ultimately included in the Final Monitor's Report, then Plaintiffs and DOJ may have the opportunity to ask the Monitor and the Department if the fact(s) may be made public after the Monitor's Report is issued. It is contemplated that these types of factual issues will be non-controversial (i.e. the number of staff in the Trials & Litigation Division).	Confidential ( <b>Category 1</b> )	§ XIX, ¶ 4.a.	
Number of Use of Force Incidents by Status, Facility, and Injury Class during the Reporting Period.	Not Confidential, but information categorized by age shall not be discussed during Period of development of Monitor Report, but is not confidential after filing of Monitor's Report ( <b>Category 3</b> )	§ XIX, ¶ 4.b.i.	Appendix A
Average Daily Population by Facility and Inmate Age Category.	No discussion during Period of development of Monitor Report, but is not confidential after filing of Monitor's Report ( <b>Category 2</b> )	§ XIX, ¶ 4.b.ii.	Appendix B
Average Staffing Levels by Facility, Rank, and Inmate Age Category during the Reporting Period.	No discussion during Period of development of Monitor Report, but is not confidential after filing of Monitor's Report ( <b>Category 2</b> )	§ XIX, ¶ 4.b.iii.	Appendix C
Average Staff on Probationary Status Assigned on Regular Basis to Housing Units for 16-17 Year Old Inmates by Facility and Rank during the Reporting Period.	No discussion during Period of development of Monitor Report, but is not confidential after filing of Monitor's Report ( <b>Category 2</b> )	§ XIX, ¶ 4.b.iv.	Appendix D
Number of Inmates Injured in Use of Force Incidents by Incident Status, Facility,	Not Confidential, but information	§ XIX, ¶ 4.b.v.	Appendix E

and Injury Class during the Reporting Period.	categorized by age shall not be discussed during Period of development of Monitor Report, but is not confidential after filing of Monitor's Report ( <b>Category 3</b> )		
The number of inmate-on-inmate assaults and fights involving Young Inmates, the number of Young Inmates who were injured in such assaults or fights, and the number of Young Inmates who suffered Class A Injuries in such assaults or fights during the Reporting Period.	No discussion during Period of development of Monitor Report, but is not confidential after filing of Monitor's Report ( <b>Category 2</b> )	§ XIX, ¶ 4.b.vi.	Appendix F
The number of staff injuries resulting from Use of Force Incidents during the Reporting Period.	No discussion during Period of development of Monitor Report, but is not confidential after filing of Monitor's Report ( <b>Category 2</b> )	§ XIX, ¶ 4.b.vii.	Appendix G
The number of cell extractions involving use of chemical agents only and no other Use of Force during the Reporting Period.	No discussion during Period of development of Monitor Report, but is not confidential after filing of Monitor's Report ( <b>Category 2</b> )	§ XIX, ¶ 4.b.viii. & § XIX, ¶ 4.b.ix.	Appendix H
Number of Use of Force Incidents Referred for Full ID Investigation by Incident Status and Facility during the Reporting Period.	Not Confidential, but information categorized by age shall not be discussed during Period of development of Monitor Report, but is not confidential after filing of Monitor's Report ( <b>Category 3</b> )	§ XIX, ¶ 4.b.x.	Appendix I
Number of Full ID Investigations Closed by Facility during the Reporting Period.	Not Confidential, but information categorized by age shall not be discussed during Period of development of Monitor Report, but is not confidential after filing of Monitor's Report ( <b>Category 3</b> )	§ XIX, ¶ 4.b.xi.	Appendix J
Use of Force numbers and dates of Use of Force incidents that remain open as of the end of the Reporting Period.	Confidential ( <b>Category 1</b> )	§ XIX, ¶ 4.c.i.	Appendix K
Total number of Full ID Use of Force Investigations open cases by quarter and year as of the end of the Reporting Period.	Not Confidential, but information categorized by age shall not be discussed during Period of development of Monitor Report, but is not confidential after filing of	§ XIX, ¶ 4.c.i.	Appendix K

	Monitor's Report (Category 3)		
Use of Force Investigations (Facility & ID) with Conclusion of Violation <i>except for aggregate data and qualitative analysis developed by Monitor and reported in Monitor's Report.</i>	Confidential (Category 1)	§ XIX, ¶ 4.c.ii.1. & § XIX, ¶ 4.c.ii.2.	Appendix L
Number of Staff who have received Counseling Meetings <i>by facility and rank</i> . The shield numbers of Staff and the dates of Counseling Meetings.	Confidential (Category 1)	§ XIX, ¶ 4.c.iii.	Appendix M
Total number of Staff system-wide who were counseled in the reporting period during the Reporting Period.	No discussion during Period of development of Monitor Report, but is not confidential after filing of Monitor's Report (Category 2)	§ XIX, ¶ 4.c.iii.	Appendix M
Number of wall mounted video surveillance cameras installed <i>by facility</i> .	Confidential (Category 1)	§ XIX, ¶ 4.c.iv.	Appendix N
The total number of cameras installed system-wide during the Reporting Period.	Not Confidential (Category 3)	§ XIX, ¶ 4.c.iv.	Appendix N
Location of inoperable wall mounted video surveillance cameras and length of time the cameras have been inoperable.	Confidential (Category 1)	§ XIX, ¶ 4.c.v.	Appendix O
Total number of inoperable video surveillance cameras system wide during the Reporting Period.	No discussion during Period of development of Monitor Report, but is not confidential after filing of Monitor's Report (Category 2)	§ XIX, ¶ 4.c.v.	Appendix O
Names of Inmates placed in Punitive Segregation or Isolation.	Confidential (Category 1)	§ XIX, ¶ 4.c.vi.	Appendix P
<ul style="list-style-type: none"> <li>Number of 18-year-old inmates placed in Punitive Segregation or Isolation during the Reporting Period.</li> <li>Reasons for the confinement (<i>i.e.</i>, the nature of the Inmate's infraction) of the 18-year-old inmates, but no identifying information during the Reporting Period.</li> <li>Number of 18 year old inmates placed in Punitive Segregation or Isolation that suffer from a mental illness during the Reporting Period.</li> </ul>	No discussion during Period of development of Monitor Report, but is not confidential after filing of Monitor's Report (Category 2)	§ XIX, ¶ 4.c.vi.	Appendix P
Any quarterly reports prepared by the UOF Auditor and referenced in Paragraph 3(c) of Section X (Risk Management).	Confidential (Category 1)	§ XIX, ¶ 4.c.viii.	Appendix R
A summary of the training provided to Staff Members pursuant to the Consent Judgment, including the name of each training course provided and the number of Staff who successfully completed the course during the Reporting Period.	No discussion during Period of development of Monitor Report, but is not confidential after filing of Monitor's Report (Category 2)	§ XIX, ¶ 4.c.vii.	Appendix Q
Names and ranks of Staff assigned to Work Regularly in Young Adult Housing Area.	Confidential (Category 1)	§ XIX, ¶ 4.c.ix.	Appendix S

Summary of Young Inmate Programming during the Reporting Period.	No discussion during Period of development of Monitor Report, but is not confidential after filing of Monitor's Report ( <b>Category 2</b> )		
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